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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,374	08/28/2003	Mark Angel	ANGEL 1000	4733

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ROB PHILLIPS
15 HASSAYAMPA TRAIL
HENDERSON, NV 89052

EXAMINER	
THOMASSON, MEAGAN J	
ART UNIT	PAPER NUMBER
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/649,374	ANGEL, MARK	
	Examiner	Art Unit	
	Meagan Thomasson	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 January 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) *2 and 3* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4-22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendments

The examiner acknowledges the amendments made to claims 1,9 and 16. Claims 2 and 3 have been cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 1,4, 6, 9-11, 15-18, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloom (US 2,253,605) in view of Haber (US 6,896,264 B1).

Bloom discloses a gaming apparatus and method for playing a game utilizing dice in column 2, lines 7-9 as "On the exposed surface of diagonally disposed plate 19 are progressive indicia, preferable the numerals 1 to 9 inclusive". Column 3 discloses

the method of play as "All the numbers are exposed at the beginning. The first player throws the dice. If the dice show a 4 and 5, a total of 9, the number 9 on the board is eliminated," (lines 1-5), followed by "Each person continues to play until he throws a number which cannot be eliminated. For example if 4 and 6 are the only remaining numbers on the board and the player throws a 5 and 4 (total of 9), the play is at an end" (lines 12-16). The numbers 1-9 are selectable and able to be eliminated by a player by placing them in the "closed" position, as described in column 2, lines 17-25.

Further, Bloom discloses a player being able to roll a single die in column 1, lines 19-22, as "If all the numbers of the board are eliminated except 1, the player on his last throw rolls only one die, since his only chance to roll this number will be with one die".

The invention disclosed by Bloom does not indicate the use of an electronically implemented method of playing a dice game, a bonus round, or a series of numbers arranged in a pyramid shape. However, the invention disclosed by Bloom does anticipate the gaming concept disclosed by the instant invention.

Haber discloses an electronic dice wagering game, featuring a processor wherein said processor simulates the rolling of two dice by means of a random number generator (column 4, lines 56-59), a touch screen display (column 5, line 9), wager acceptance means and player indicia selection means (column 5, lines 1-2). In addition, Haber discloses a pre-established pay table wherein a player is awarded a payout for winning a play, accordingly (column 4, lines 43-46). It is well known in the art for an electronic gaming device to feature touch screen technology, a processor, wager

acceptance means, indicia selection means, and a predetermined pay table (similar technology is also disclosed by Brune et al.).

Haber further discloses a payout related to the final roll of the dice, stated as "The higher and lower wagers are based on two consecutive rolls of the dice. Therefore, to win a "higher" wager, the sum of the two dice on consecutive rolls must exceed seven. For example, a first roll of eight and a second roll of nine qualifies as a winning "higher" wager" in column 2, lines 6-10.

It is obvious to combine the teachings of Bloom and Haber due to their similar subject matter, namely a dice game and method wherein the outcome of said game is determined by the combination of indicia that results simultaneously rolling two dice, said combination being their sum.

2. **Claim 5 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Bloom, Haber and further in view of Flannery (US 6,554,281)**. Flannery discloses a dice wagering game wherein numerical indicia are arranged in the shape of a pyramid, stated as "The pyramidal group 24" in column 2, line 51, and as shown in figure 5. It is obvious to combine the teachings of Bloom/Haber and Flannery due to their similar subject matter, namely a dice game and method wherein the outcome of said game is determined by the combination of indicia that is the result of simultaneously rolling two dice. Additionally, arranging the numbers to be in the shape in a design choice at the discretion of the inventor, as it does not appear to provide any additional functionality to, nor further enhance, the game playing method as claimed. Thus, this feature does not

render the invention not new, novel or unobvious as it is merely a re-arrangement of the numbers in the invention disclosed by Bloom.

3. **Claims 7, 8, 12-14, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloom in view of Haber and still further in view of Brune et al. (US 5,851,148)**. Brune et al. discloses a casino game with a bonus round wherein said bonus round is activated after successfully completing a predetermined number of primary game rounds, stated as "In one embodiment, the occurrence of a winning hand or other trigger event on any of the plurality of gaming devices causes incrementation of a corresponding counter or otherwise contributes to progress toward the multi-game goal" in column 7, lines 10-14, and "The feature allows a player to build up to a bonus or payout that the player earns through playing multiple games" in column 5, lines 10-12. Additionally, awarding a bonus to a player for obtaining a pre-established number of pre-determined outcomes is notoriously well known in the art and does not render the invention new, novel or unobvious.

In addition, Brune et al. discloses a method for resetting the bonus meter, or scoreboard, in instances when the machine has been idle for a predetermined time interval, as stated in column 6, lines 34-36. It is inherent that this method of resetting the bonus meter includes a timer.

Further, Brune et al. discloses an indicator signifying the number of primary game rounds successfully completed, referred to as "The scoreboard display 122 provides a region 314 indicating the current amount of the bonus prize and a region 316

indicating the player's progress towards the goal" in column 2, lines 35-38. Regarding claim 8, Brune et al. discloses a progressive jackpot in column 6, line 50.

As aforementioned, Brune et al. discloses an electronic gaming machine featuring the named components of the instant invention including touch screen technology, a processor, wager acceptance means, indicia selection means, and a predetermined pay table as described throughout the specification.

It is obvious to combine the teachings of Bloom, Haber and Brune et al. due to their similar subject matter, namely a gaming apparatus and method.

Response to Arguments

Applicant's arguments filed January 22, 2007 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the inventions disclosed by Bloom and Haber are analogous in that they are both methods of playing a dice wagering game. Haber is used to modify Bloom in order to produce a dice wagering game that operates electronically. Motivation to do

so can be found in the Haber abstract, wherein it is disclosed that the invention may be provided to the user in either a non-electronic game table and physical dice–type layout or in an electronic embodiment (abstract). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the non-electronic invention of Bloom in the electronic form disclosed by Haber.

Additionally, the inventions disclosed by Bloom and Flannery are analogous in that they are both dice wagering games. Flannery is used to modify Bloom in order to produce a dice wagering game that features a series of numbers displayed in the shape of a pyramid. As stated above, the shape of the number arrangement is nothing more than a design choice at the discretion of the inventor. It does not enhance the game method itself. Further, Flannery discloses the arrangement of the series of numbers in multiple forms, including rectangular and pyramidal (Figs. 1-3). Thus, it would have been obvious to one of ordinary skill in the art to modify the layout of the series of numbers of Bloom to resemble that of Flannery, particularly as Bloom states in col. 3, lines 49-51 that "obviously, various change and alterations might be made in the general form and arrangement of the parts described without departing from the invention".

Additionally, applicant's argument that the amendments to claims 1,9 and 16 to include the limitation of providing a payout according to a pre-established pay table for winning a play by clearing the series of numbers, said payout based on a sum of a final roll of the dice used to clear the series of numbers, overcomes the rejection of Bloom in view of Haber, is not persuasive. As stated in the previous office action, Haber discloses

a payout related to the final roll of the dice, stated as "The higher and lower wagers are based on two consecutive rolls of the dice. Therefore, to win a "higher" wager, the sum of the two dice on consecutive rolls must exceed seven. For example, a first roll of eight and a second roll of nine qualifies as a winning "higher" wager" in column 2, lines 6-10. Haber also discloses that the payout is awarded according to a pre-defined pay table in col. 4, lines 43-50.

Regarding applicant's arguments that Brune does not disclose the limitations of claim 7, specifically that a bonus round is activated once the player clears a pre-established number of pyramids, because "just playing the game, regardless of the game outcomes, causes a player to progress toward a bonus" (remarks, P. 7, 2nd paragraph), is not persuasive. As disclosed by Brune, a player must obtain a "predefined subset 418a of all cards in the game" in order to be awarded a bonus (col. 4, lines 43-47). Further, the predefined subset must be "cleared" from the gaming board before the bonus is awarded. Thus, the outcome of the game, i.e. the cards dealt, determine whether or not a bonus is awarded and do, in fact, meet the limitations of the claim.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meagan Thomasson whose telephone number is (571) 272-2080. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert E Pezzuto
Supervisory Patent Examiner
Art Unit 3714

Meagan Thomasson
April 16, 2007